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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/991,127	11/14/2001	Ethan George Russell	APPL0002	5209

25268 7590 08/25/2005

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EXAMINER	
STRANGE, AARON N	

ART UNIT	PAPER NUMBER
2153	

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/991,127	RUSSELL ET AL.	
	Examiner	Art Unit	
	Aaron Strange	2153	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 May 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-56* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-56* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Confirmation of the election of claims 1-56 and cancellation of claims 57-61 is noted.

Claim Objections

2. In view of the amendment to claim 21, the objection presented in the Office action of 2/15/2005 is withdrawn.

Claim Rejections - 35 USC § 112

3. Applicant's amendments to claims 4,12,24, and 27 are sufficient to overcome the rejection of claims 4-6, 12, and 24-27, presented under 35 USC 112 2nd Paragraph, in the Office action of 2/15/2005.

4. With regard to claims 16 and 45-48, Applicant's arguments (Page 16, Lines 5-7 and 12-15) are persuasive, and these rejections have also been overcome.

Response to Arguments

5. Applicant's arguments filed 5/16/2005 have been fully considered but they are not persuasive.

6. With regard to claim 1 and Applicant's assertion that "Burman fails to disclose, teach, or suggest 'including machine instructions that define a performance monitoring

function with the distributed application data that were requested and transmitted over the network to the second site'" (Page 17, Lines 22-25 or Remarks), the Examiner respectfully disagrees.

Burman discloses that the distributed application data (web page) contains a link or reference to the rich media file, which is retrieved when the web page is received at the client (Par 47, Lines 11-16). One of ordinary skill in the art would readily recognize that the browser performs this operation automatically, without any additional action by the user, and the receipt of the distributed application data (web page) is not complete until this step is performed, since the script is part of the distributed application data (web page). Therefore, the instructions are included with the distributed application data. Burman also discloses that the web page may "contain executable software" which is executed to determine a fetch latency (at least Par 25).

Furthermore, nothing in claim 1 precludes the distributed application data from being transmitted in a plurality of files. If Applicant wishes to preclude inclusion of machine instructions by reference, the Examiner recommends that the claims be amended to require the distributed application data (Web Page) and machine instructions to be located in a single file, or a similar recitation which limits the number of files that may be transmitted.

7. With further regard to claim 1, and Applicant's assertion that "Burman does not disclose, teach, or suggest determining 'one or more performance metrics for the distributed application without using the performance monitoring function to request any

distributed application data from any other site'"(Page 18, Lines 6-8 of Remarks), the Examiner respectfully disagrees. Burman discloses that the requested image may be located at the same site as the web page (Par 69, Lines 1-7). Therefore, the performance monitoring function does not request distributed application data from any other site, since it is requesting from the same site as the web page.

8. Independent claims 13,14, 21,35, and 42 contain similar arguments as those presented for claim 1. Therefore, those arguments are not persuasive for the reasons discussed above with respect to claim 1.

9. With further regard to claims 13 and 14, and Applicant's assertion that "the ***browser monitoring function*** of claim 13 (14) is **not** used to initiate a request for **any** data" (Page 20, Lines 6-7 and Page 21, Lines 9-10 of Remarks), it is noted that claims 13 and 14 contain no language referring to a *browser* monitoring function and instead refer to a *performance monitoring function*.

10. With further regard to claim 21, and Applicant's assertion that Burman does not teach how to deal with the condition in which a correlated performance metric is to be determined, it is noted, as explained in the Office action that these steps are ***optional***, and Burman does not need to show them to anticipate the claim. The preamble states that "at least one of" a compound performance metric and a correlated performance metric are determined and collected. Therefore, only a single one of the two is required

to anticipate the claim. In the present case, Burman teaches determining and collecting a compound performance metric. Therefore, the steps which apply only to the determining of a correlated metric need not be disclosed since they only occur when calculating a correlated metric, which is an optional feature of the claim.

11. With further regard to claim 35, and Applicant's assertion that Burman never discloses either a compound metric or a correlated metric, the Examiner respectfully disagrees. As discussed in the Office action of 2/15/2005, Burnham discloses determining a fetch latency (Par 66-70), which is a compound performance metric as defined by Applicant and is even used as an example of a compound performance metric in Applicant's own specification (Page 5, Line 27 to Page 6, Line 5 of present application). Applicant has presented a similar argument for claim 42, which is not persuasive for the same reasons.

12. Applicant has failed to provide additional arguments for claims depending from the above claims. Therefore, Applicant's arguments with respect to the dependent claims are not persuasive for the same reasons as those discussed above.

Claim Rejections - 35 USC § 102

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

14. Claims 1-3,7,10,12-15,19,21,22,29,31,32,35,38,40-43,50,52, and 53 are rejected under 35 U.S.C. 102(e) as being anticipated by Burman et al. (US 2001/0010059).

15. With regard to claim 1, Burman discloses a method for determining one or more performance metrics for a distributed application in which distributed application data are transferred from a first site (server) to a second site (client) over a network, comprising the steps of: (a) enabling a user to transmit a request for the distributed application data desired by the user (Par 47, Lines 1-5), said request being transmitted from the second site to the first site over the network; (b) in response to the request, transmitting the distributed application data from the first site to the second site over the network, if the distributed application data are not already accessible at the second site (Par 47, Lines 1-5); (c) including machine instructions that define a performance monitoring function with the distributed application data that were requested and transmitted over the network to the second site (Par 47, Lines 11-16); and (d) executing the machine instructions at the second site, to implement the performance monitoring function and to determine the one or more performance metrics for the distributed application without using the performance monitoring function to request any distributed application data from any other site (Par 63).

16. With regard to claim 2, Burman further discloses that the performance monitoring function at the second site is initiated after the distributed application data are accessed at the second site (Par 63).

17. With regard to claim 3, Burman further discloses the step of collecting the one or more performance metrics for the distributed application over the network (Par 80, Lines 3-11).

18. With regard to claim 7, Burman further discloses that the performance monitoring function at the second site determines at least: (d) a per-image fetch latency, corresponding to a time period for fetching a specific image referenced in the distributed application data; and (e) an image arrival time, corresponding to a time at which a specific image, loaded as a part of accessing the distribution application data, arrives at the second site (Par 66-70, esp. Par 70, Lines 4-12).

19. With regard to claim 10, Burman further discloses the distributed application data have a markup language format (web pages) (Par 47).

20. With regard to claim 12, Burman further discloses that said one or more performance metrics is determined without any apparent effect on the access of the

distributed application data at the second site (metrics are determined after page is retrieved) (Par 48).

21. With regard to claim 13, Burman discloses a machine-readable medium on which are stored machine instructions for inclusion with distributed application data that are transferred from one site to another, said machine instructions causing: (a) a performance monitoring function to be implemented when the distributed application data are accessed (Par 66); and (b) the performance monitoring function to determine one or more performance metrics (fetch latency) (Par 66-70) for a distributed application in which the distributed application data (images) are transferred between sites and accessed at one of the sites, without using the performance monitoring function to request any distributed application data from any other site (images requested are on same server) (Par 69, Lines 1-7). Since the system disclosed by Burman operates on computers, a machine-readable medium is present which holds the instructions for the computers to read.

22. With regard to claim 14, Burman discloses a system for determining one or more performance metrics for a distributed application in which distributed application data are transferred from a first site to a second site over a network, comprising: (a) a memory; (b) a network interface; and (c) a processing device that is coupled to the memory, and the network interface, said network interface being adapted to enable communication over the network, wherein at the second site, the processing device

causes a request for the distributed application data to be transmitted over the network through the network interface to the first site (Par 47, Lines 1-5), said processing device at the first site responding by transmitting the distributed application data along with machine instructions that cause the processing device at the second site to perform a performance monitoring function when executed by said processing device as the distributed application data are accessed at the second site (Par 47, Lines 1-16), said performance monitoring function determining said at least one performance metric (fetch latency) (par 66-70) and being implemented without requiring any affirmative action by a user of the processing device and without using the performance monitoring function to request any distributed application data from any other site (images requested are on same server) (Par 69, Lines 1-7).

23. With regard to claim 15, Burman further discloses that the machine instructions cause the processing device at the second site to transmit said at least one performance metric over the network to a data center serving as a collection site for performance metrics, said data center comprising one of the first site and a separate site that is tasked with collecting the performance metrics (Par 80, Lines 3-11).

24. With regard to claim 19, Burman further discloses that the performance monitoring function at the second site determines at least: (d) a per-image fetch latency, corresponding to a time period for fetching a specific image referenced in the distributed application data; and (e) an image arrival time, corresponding to a time at which a

specific image, loaded as a part of accessing the distribution application data, arrives at the second site (Par 66-70, esp. Par 70, Lines 4-12).

25. With regard to claim 21, Burman discloses a method for determining and collecting at least one performance metric related to access of a Web page by a browser program on a client device, including at least one of a compound performance metric (fetch latency) (Par 66-70) and a correlated performance for a network, comprising the steps of: (a) enabling a user to request transfer of the Web page from a server device to the client device over a network (Par 47, Lines 1-5); (b) including machine instructions with the Web page when the Web page is transferred to the client device (Par 47, Lines 11-16); (c) when the Web page is loaded by the client device for rendering by the browser program, causing the client device to execute the machine instructions to carryout a browser monitoring function, said browser monitoring function being implemented without requiring any affirmative action by a user of the client device (Par 63); (d) determining said at least one performance metric on the client device with the browser monitoring function without using the browser monitoring function to request any Web page from any other site (images requested are on same server) (Par 69, Lines 1-7). Since no correlated performance metric is to be determined, Burman meets all claim limitations. Step (e) is an optional step, only required when a correlated performance metric is to be determined.

26. With regard to claim 22, Burman further discloses the step of transmitting said at least one performance metric from the client device to a remote site over the network (Par 80, Lines 3-11).

27. With regard to claim 29, Burman further discloses that the performance monitoring function at the second site determines at least: (d) a per-image fetch latency, corresponding to a time period for fetching a specific image referenced in the Web page; and (e) an image arrival time, corresponding to a time at which a specific image, loaded as a part of rendering the Web page, arrives at the second site (Par 66-70, esp. Par 70, Lines 4-12).

28. With regard to claim 31, Burman further discloses that said at least one performance metric comprises a performance metric (fetch latency) (Par 70, Lines 4-12) for each image included in the web page (Par 66-70).

29. With regard to claim 32, Burman further discloses including a monitor cookie with the web page that is transferred to the client device from the server device which indicates that the Web page is a monitored document (cookies are set by server)(Par 124); detecting the monitor cookie when the Web page is transferred to the client device (Par 128-129); and causing the browser function to determine that said at least one performance metric is to be determined for the Web page in response to the monitor cookie being detected (if cookie does not contain bandwidth info, collect it) (Par 129).

30. With regard to claim 35, Burman discloses a memory medium on which are stored machine readable instructions (script file) (Par 63, Lines 5-6), which when executed by a client computing device, cause the client computing device to carryout a browser monitoring function, said browser monitoring function being implemented without requiring any affirmative action by a user of the client computing device (script is executed automatically) (Par 63, Lines 1-4) and being used for determining at least one performance metric (fetch latency) on the client computing device with the browser monitoring function (Par 63), said at least one performance metric being related to access of a distributed application (latency and/or client bandwidth) (Par 70) by a browser program executed on the client computing device and enabling at least one of a compound performance metric (fetch latency) (Par 66-70) and a correlated performance metric be determined without using the browser monitoring function to request any distributed application from any other site (images requested are on same server) (Par 69, Lines 1-7).

31. With regard to claim 38, Burman further discloses that the machine readable instructions determine at least: (d) a per-image fetch latency, corresponding to a time period for fetching a specific image referenced in the Web page; and (e) an image arrival time, corresponding to a time at which a specific image, loaded as a part of rendering the Web page, arrives at the second site (Par 66-70, esp. Par 70, Lines 4-12).

32. With regard to claim 40, Burman further discloses that said at least one performance metric comprises a performance metric (fetch latency) (Par 70, Lines 4-12) for each image included in the web page (Par 66-70).

33. With regard to claim 41, Burman further discloses detecting whether a monitor cookie is included with the distributed application (web page) that is transferred to the client computing device, said monitor cookie indicating that the distributed application is a monitored document (cookies are set by server)(Par 124); and causing the browser monitor function to determine that said at least one performance metric is to be determined for the distributed application in response to the monitor cookie being detected (if cookie does not contain bandwidth info, collect it) (Par 129).

34. With regard to claim 42, Burman discloses a system for determining and collecting at least one performance metric related to access of a Web page by a browser program, comprising: connecting to a remote storage at a server to retrieve the Web page (retrieve web page) (Par 47, Lines 1-5), said Web page including machine instructions (Par 47, Lines 11-16) that perform a browser monitoring function and which are executed by the processing device when the Web page is loaded by the processing device for rendering (Par 63), said browser monitoring function determining said at least one performance metric (fetch latency) and being implemented without requiring any affirmative action by a user of the processing device and without using the browser monitoring function to request any Web page from any other site(images requested are

on same server) (Par 69, Lines 1-7), said at least one performance metric including at least one of compound performance metric (fetch latency) (Par 66-70) and a correlated performance metric. Burman further discloses (a) a memory; (b) a network interface; and (c) a processing device that is coupled to the memory and the network interface since Burman discloses that a client computer makes the Web page request (Par 47, Lines 1-5). A client computer making a web page request must have a memory, network interface, and processing device connected to the memory and network interface since these components are required for a computer to be operable and make requests via a network.

35. With regard to claim 43, Burman further discloses that the machine instructions further cause the processing device to transmit said at least one performance metric from the processing device to a remote site over the network through the network interface (Par 80, Lines 3-11).

36. With regard to claim 50, Burman further discloses that said at least one performance metric includes at least: (d) a per-image fetch latency, corresponding to a time period for fetching a specific image referenced in the Web page; and (e) an image arrival time, corresponding to a time at which a specific image, loaded as a part of rendering the Web page, arrives at the second site (Par 66-70, esp. Par 70, Lines 4-12).

37. With regard to claim 52, Burman further discloses that said at least least one performance metric comprises a performance metric (fetch latency) (Par 70, Lines 4-12) for an object (image) included in the web page (Par 66-70).

38. With regard to claim 53, Burman further discloses detecting whether a monitor cookie is included with the Web page, said monitor cookie indicating that the Web page is a monitored document (cookies are set by server)(Par 124); and cause the processing device to determine that said at least one performance metric is to be determined for the Web page in response to the monitor cookie being detected (if cookie does not contain bandwidth info, collect it) (Par 129).

Claim Rejections - 35 USC § 103

39. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

40. Claims 4,6,11,16,18,23,24,26,33,34,36,44,45, and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burman et al. (US 2001/0010059) in view of Bryant et al. (US 6,411,998).

41. With regard to claims 4,16,24, and 45, while the system disclosed by Burman shows substantial features of the claimed invention (discussed above), it fails to

disclose that the step of collecting the performance metrics includes the step of applying a probabilistic sampling parameter to determine whether performance metrics are collected from each of a plurality of sites.

Bryant discloses a similar system of monitoring fetch latency of requests to a Web server. Bryant teaches that the amount of data collected can be minimized by randomly sampling the recorded times and logging only a subset of the times (Col 6, lines 41-46). While Bryant fails to explicitly recite the use of a probabilistic sampling parameter, such a parameter is required in order to limit the data collected to a subset of the total data, as disclosed by Bryant. This would have been an advantageous addition to the system disclosed by Burman since it would have reduced the amount of data collected for servers that receive large numbers of requests, making it easier to analyze the results.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply a probabilistic sampling parameter to randomly collected the performance metrics from a subset of the sites in order to reduce the amount of data collected.

42. With regard to claims 6,18,26, and 47, Bryant further discloses that the probabilistic sampling parameter is applied on a per-request basis (individual request times are sampled) (Col 6, Lines 31-46).

43. With regard to claims 11,23,33,34,36 and 44, while the system disclosed by Burman shows substantial features of the claimed invention (discussed above), it fails to disclose determining a performance metric at the first site; and combining the performance metric determined at the second site with a performance metric determined at the first site to determine a correlated performance metric.

Bryant discloses a similar system of monitoring fetch latency of requests to a Web server. Bryant teaches determining a performance metric at the first site (SERVER_PROCESSING_TIME) and combining it with the performance metric determined at the second site (LASTRSPTIME) to determine a correlated performance metric (Internet_Delay_Time) (Col 4, Line 65 to Col 5, Line 21 and Col 8, Lines 20-25). This allows the delay associated with the actual transmission over the network to be determined, exclusive of the server processing delay.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine a performance metric collected at the first site with a performance metric collected at the second site. This would have allowed the delay associated with the actual transmission over the network to be determined by the system.

44. Claims 5,17,25, and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burman et al. (US 2001/0010059) in view of Bryant et al. (US 6,411,998) in further view of Bland et al. (US 5,732,218).

45. With regard to claims 5,17,25, and 46, while the system disclosed by Burman in view of Bryant shows substantial features of the claimed invention (discussed above), it fails to disclose that the probabilistic sampling parameter is applied on a per-session/user basis.

Bland teaches a method of collecting data about client sessions wherein data about request delays is collected for an entire session prior to sending it to the server (Col 3, Lines 19-23). Applying the probabilistic sampling parameter on a per-session basis and collecting data for entire sessions allows information about the clients entire experience to be determined based on how the delays changed throughout the session.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the probabilistic sampling parameter on a per-session basis and collect data for entire sessions. This allows delay data to be analyzed to determine changes in the metrics over the duration of client sessions.

46. Claims 8,27,28,37,48,49,54 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burman et al. (US 2001/0010059) in view of Bland et al. (US 5,732,218).

47. With regard to claim 8,27, and 48, while the system disclosed by Burman shows substantial features of the claimed invention (discussed above), it fails to disclose that a plurality of different performance metrics can be determined by the browser monitoring

function, and determining whether to collect a performance metric as a based on a specific kind of performance metric that was determined.

Bland discloses a method of collecting data about client requests to a Web Server, wherein clients can collect a plurality of different performance metrics (Col 4, Lines 9-59). Bland teaches that the clients only collect data that is pertinent to a server in response to a request from that server (Col 4, Line 64 to Col 5, Line 16). This would have been an advantageous addition to the system disclosed by Burman since it would have reduced the amount of data that the clients must collect and transmit to the servers, reducing the load on the clients and servers.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to collect specific performance metrics as needed by the server. This reduces the amount of data that must be collected and transmitted, reducing the load on the clients and servers.

48. With regard to claims 28, 37, and 49, while the system disclosed by Burman shows substantial features of the claimed invention (discussed above), it fails to specifically disclose that the step of determining said at least one performance metric is done without the client device providing any indication to the user of the client device that said at least one performance metric is being determined.

Bland discloses a similar system of collecting data about client transactions with a Web server. Bland teaches that the parameters may be collected by the client automatically for all data or in response to a request from a server (Col 4, Lines 60-67).

Bland also teaches that notifying and requesting permission before collecting data is optional (Col 5, Lines 11-14). This would have been an advantageous addition to the system disclosed by Burman since collecting the data without notifying the user allows the system to quickly collect the data and customize the content displayed to the user based on the results.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to determine the performance metric without notifying the user since it would have allowed the parameter to be quickly determined in order to customize the content provided to the user based on the calculated metric.

49. With regard to claims 54, while the system disclosed by Burman shows substantial features of the claimed invention (discussed above), it fails to disclose (a) a server computing device that is remote from the processing device and coupled in communication with the processing device and with the data center over a network through the network interface, said server computing device executing a server monitoring function in regard to transferring the Web page to the processing device over the network; (b) said server computing device determining a server performance metric related to the transfer of the Web page to the processing device from the server computing device; and (c) said server computing device transmitting said server performance metric to the data center site for processing.

Bland teaches collecting performance metrics for the server related to the

transfer of Web pages (Col 3, Line 40 to Col 4, Line 59) and transmitting the metrics to a remote data center site for processing (central server that has management system) (Col 3, Lines 17-22). This would have been an advantageous addition to the system disclosed by Burman since it allows the data to be centrally collected for analysis.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to collect performance metrics at the server and send them to a remote data center for processing since it would have allowed data for multiple servers to be centrally collected and analyzed.

50. With regard to claim 56, while the system disclosed by Burman shows substantial features of the claimed invention (discussed above), including a caching proxy (proxy server 30) (Par 119, Lines 6-11) disposed between the server computing device and the processing device (Fig 1, 30), it fails to disclose said caching proxy executing a caching proxy monitoring function that determined at least one performance metric related to a performance of the caching proxy.

Bland teaches a method of collecting performance metrics for a server related to Transfer of Web page requests to a client. Bland discloses that several types of metrics are collected at the server (Col 3, Line 41 to Col 4, Line 59). For example, the delay between a client request and a server response is measured to determine the load on the server (Col 3, Lines 47-51). This would have been an advantageous addition to the system disclosed by Burman since the proxy server can have a significant effect on the

overall latency of client requests, and determining information about its performance is crucial to finding bottlenecks in the network.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to executing a monitoring function on the proxy server to determine at least one performance metric related to the performance of the caching proxy, since the proxy server has a significant effect on latency of client requests.

51. Claims 9,20,30,39 and 51 rejected under 35 U.S.C. 103(a) as being unpatentable over Burman et al. (US 2001/0010059) in view of Jia Wang.

52. With regard to claims 9,20,30,39, and 51, while the system disclosed by Burman shows substantial features of the claimed invention (discussed above), it fails to disclose determining whether the distributed application data (web page) has already been cached at the second site (client), before determining a performance metric.

Wang discloses that browser caches and proxy caches are well-known in the art for maintaining local copies of web documents (Section 4.1.1). Browser caches and proxy caches provide reduced latency for accessing web documents (Section 3). The closer the document is to the requesting client, the faster it will be able to retrieve it. It would be advantageous to determine if the distributed application data being requested by the client has been cached prior to determining a performance metric. If the data has been cached, the latency will be significantly lower than it would have been for uncached data, making the collected data less reliable.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to determine if the requested data has been cached prior to determining a performance metric since cached data will be retrieved much more quickly and the results will not be an accurate indicator of actual network latency.

53. Claim 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burman et al. (US 2001/0010059) in view of Bland et al. (US 5,732,218) in further view of Bryant et al. (US6,411,998).

54. With regard to claim 55, while the system disclosed by Burman in view of Bland shows substantial features of the claimed invention (discussed above), it fails to disclose that the data center combines a performance metric determined by the browser monitoring function executed by the processing device with the server performance metric determined by the server computing function to determine the correlated performance metric.

Bryant discloses a similar system of monitoring fetch latency of requests to a Web server. Bryant teaches determining a performance metric at the first site (SERVER_PROCESSING_TIME) and combining it with the performance metric determined at the second site (LASTRSPTIME) to determine a correlated performance metric (Internet_Delay_Time) (Col 4, Line 65 to Col 5, Line 21 and Col 8, Lines 20-25). This allows the delay associated with the actual transmission over the network to be determined, exclusive of the server processing delay.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine a performance metric collected at the first site with a performance metric collected at the second site. This would have allowed the delay associated with the actual transmission over the network to be determined by the system.

Conclusion

55. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

56. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron Strange whose telephone number is 571-272-3959. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AS
8/8/2005

ABDULLAH SALAM
Primary Examiner